IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 839 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJ.

Versus

NARENDRABHAI BABUBHAI PATEL

Appearance:

1. Criminal Appeal No. 839 of 1990

MR DP JOSHI, APP for the appellant.

MR NITIN M AMIN for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 07/09/2001

ORAL JUDGEMENT

In this appeal, which is filed under section 378 of the Code of Criminal Procedure, 1973, the State of Gujarat has questioned acquittal of the respondents of the offences punishable under sections 498-A & 201 of the

Indian Penal Code recorded by the learned Jt. Judicial Magistrate, First Class, Viramgam, in Criminal Case No. 1317/87.

2. The respondent no.1 is the husband of deceased Jayshree, whereas respondents no.2 & 3 are father and mother respectively of respondent no.1, and respondent no.4 is the partner of respondent no.1. The incident in question took place on July 4, 1987 at about 10.30 A.M. in the house of the respondents no.1 to 3. In the incident the deceased expired due to burn injuries. Initially, respondent no.4 had disclosed at Viramgam Police Station that the deceased and her son Pintu had received burn injuries accidentally and in view of the said information, the case was investigated as an accident. However, Mr. V.C.Gohil, who was Police Inspector of Viramgam Police Station, had filed complaint on July 18, 1987 on behalf of the State Government against the respondents for the offences punishable under sections 302, 306, 201 & 498-A of the Indian Penal Code. The respondents were arrested, but were released on bail by the Sessions Court. The investigating officer had sought an opinion from Mr.. V.C.Vyas, the then Public Prosecutor to ascertain the exact nature of offence committed by the respondents. Mr. V.C.Vyas opined that no offence under section 302 or section 306 of I.P.C. was made out and, therefore, at the conclusion of investigation, the respondents were chargesheeted of the offences punishable under sections 498-A & 201 of the Indian Penal Code, as it was the case of the prosecution that the respondents had subjected the deceased to cruelty because the deceased did not bring sufficient dowry and that the respondents were entertaining a doubt that Pintu was of bad omen. The learned Magistrate had framed charge against the respondents of the offences punishable under sections 498-A & 201 of the Indian Penal Code. The charge was read over and explained to the respondents, who pleaded not guilty to the same and claimed to be tried. Therefore, in all 16 witnesses were examined by the prosecution to prove its case against the respondents. Documentary evidence, such as, postmortem notes, different panchnamas prepared during the course of investigation, complaint etc. was also produced in support of the case of prosecution against the respondents. After recording of evidence of prosecution witnesses was over, the learned Magistrate had explained circumstances to the respondents which had emerged against them in the evidence of prosecution witnesses and recorded their further statements under section 313 of the Code. In their further statements, the respondents denied the case of prosecution, but did not examine any

witness in support of their defence.

3. After appreciating the evidence led by the prosecution, the learned Magistrate has acquitted the respondents by judgment dated June 30, 1990, giving rise to present appeal.

4. Mr. D.P.Joshi, learned A.P.P. after taking me through the entire evidence on record,submitted that the evidence of witness Shardaben Chandrakantbhai at Exh.40, who is mother of the deceased, establishes that the deceased was subjected to physical as well as mental cruelty because the respondent no.3 was of the opinion that the deceased had given birth to Pintu who had brought bad omen and, therefore, relying upon the deposition of mother of the deceased, the respondents ought to have been convicted of the offences with which they were charged. The learned counsel further referred to the evidence of witness Rajeshkumar Chandrakantbhai recorded at Exh.42 and pleaded that the case against the respondents under section 498-A read with section 201 I.P.C. having been made out, the appeal should be accepted. According to the learned counsel for the State, the reasons given by the learned Magistrate for acquitting the respondents are contrary to the evidence on record and, therefore, the judgment impugned in the appeal should be reversed.

5. Mr. Nitin M. Amin, learned counsel for the respondents submitted that the respondent no.4 is not the relative of husband of the deceased and he having not played any role, except disclosing fact of accidental burns received by the deceased and her son, he could not have been prosecuted of the offence punishable under section 498-A I.P.C. The learned counsel emphasised that the three dying declarations which are on record of the case completely exonerate the respondents of the charges levelled against them and in view of those dying declarations, the learned Magistrate was justified in not placing reliance upon the depositions of the mother and brother of the deceased. According to the learned counsel for the respondents, the prosecution has failed to lead cogent evidence to establish that there was any wilful conduct on the part of the respondents of such a nature which had driven the deceased to commit suicide or cause grave injury or danger to life, limb or health of the deceased, nor any evidence is led to establish that the deceased was subjected to harassment with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security and, therefore, the appeal should be dismissed.

6. I have heard the learned counsel for the parties and reviewed the whole evidence on record. From the record of the case, it is evident that after giving primary treatment, the deceased was transferred to Sheth V.S.General Hospital, Ahmedabad. Her dying declaration was recorded by the Executive Magistrate, Metropolitan Area, Ahmedabad on July 4, 1987 at 17.45 hours. In her dying declaration, the deceased clearly stated that when she was cooking dal, the front portion of her sari had come in contact with flame of the burning gas, as a result of which, she was burnt and that her mother-in-law had tried to extinguish fire on her. On July 4, 1987, her statement was recorded by police head constable and in the said statement also the deceased mentioned that she had received burn injuries accidentally. Further on July 6, 1987, P.S.I. Mr. Joshi had recorded her statement and in that statement also she had stated that her relations with her in-laws were good and that she had received burn injuries accidentally. It was also further stated that meanwhile her son Pintu had clinged to her and, therefore, he had also received burn injuries. It is true that mother and brother of the deceased have stated before the Court that the deceased was subjected to physical as well as mental cruelty because she had failed to bring sufficient dowry and because the mother-in-law of the deceased was entertaining a doubt that Pintu was of bad omen. However, the dying declarations which have been produced by the prosecution itself on the record of the case, would indicate that the deceased was not subjected to any cruelty at all by any of the respondents. In a case where the prosecution leads two sets of evidence, each one of which contradicts the other, it is difficult to found conviction on the accused. In Harchand Singh and another v. State of Haryana, A.I.R. 1974 SC 344 the Supreme Court has ruled that in a case wherein one set of evidence condemns the other set leaving the Court with no reliable and trustworthy evidence upon which conviction of accused might be based, the accused is entitled to acquittal. Further the respondent no.4 is not relative of the husband of the deceased, or for that matter, either of respondent no.2 or respondent no.3 and, therefore, could not have been prosecuted of the offence punishable under section 498-A of the Act. The evidence of witness Vikrambhai Jayantibhai at Exh.31 would indicate that he is residing in the society of the respondents and he has admitted in his cross-examination that the relations of the deceased with the respondents were cordial and that no quarrel had taken place between any of them. The evidence of the investigating officer would further show

that nothing incriminating was found when panchnama of place of incident was drawn in presence of panch witnesses. As observed earlier, Police Inspector Mr. Gohil had filed complaint on July 17, 1987 i.e. roughly after 13 days of the incident and no explanation is offered regarding delay caused in filing the first information report. The prosecution has not led any evidence to establish that the respondents had demanded dowry in presence of any of the prosecution witnesses, nor any reliable evidence is led to establish that the deceased was subjected to either physical or mental cruelty. On over all view of the matter, I am satisfied that cogent reasons have been given by the learned Magistrate for acquitting the respondents of the offences with which they were charged and the learned Additional Public Prosecutor has failed to dislodge those reasons. The result is that the acquittal appeal cannot be accepted and is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed.

Muddamal articles to be disposed of in terms of directions given by the learned Magistrate in the impugned judgment.

(J.M.Panchal,J.)

(patel)